In the Supreme Court of the United States.

OCTOBER TERM, 1916.

THE UNITED STATES, PETITIONER,
v.
NORTHERN PACIFIC RAILWAY COMPANY. } No. 44.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

BRIEF FOR THE UNITED STATES.

STATEMENT OF CASE.

This is a civil proceeding, brought by the United States in the District Court of the United States for the District of North Dakota, to recover $500 from the Northern Pacific Railway Company for failure to file, for five successive days, with the Interstate Commerce Commission, a report of violations of the hours-of-service act (March 4, 1907; c. 2939, 34 Stat. 1415, 1416), as required by an order of the Commission issued June 28, 1911 (R. p. 2). The order was made under authority of section 20 of the Act to Regulate Commerce, as

amended (June 18, 1910; c. 309, 36 Stat. 539, 555, 556), and required the carrier to file within thirty days after the end of each month a report of *all* instances of excess service by its employees. The District Court rendered judgment for the Government (R. p. 11), but was reversed by the Circuit Court of Appeals for the Eighth Circuit (R. p. 17; 213 Fed. 162). Application for writ of certiorari was granted by this court, and the case is here for hearing upon the merits.

STATEMENT OF FACTS.

The case was heard in the District Court upon motion for judgment on the pleadings. The undisputed facts are as follows: Certain employees of respondent were called at 8.10 p. m. on October 29, 1911, to move a wrecker train. It was ascertained, however, that this train would not be needed, and the crew were notified upon reporting for duty that their services would not be required until 10.35 p. m. of the same day. From 8.10 p. m. to 10.35 p. m. they did not render any service to respondent "save that they kept alive the fire in the engine during said period." At the latter hour the crew again reported for duty and left on a special freight train, which, on account of hot boxes, was delayed 65 minutes and did not reach its destination until 1.15 p. m. on October 30. (R. p. 9.) The railroad company did not consider that these facts constituted excess service under the law, and consequently failed to include them in its monthly report to the commission. (R. p. 10.)

QUESTION PRESENTED.

Does failure to report certain instances of excess service, as required by an order of the Interstate Commerce Commission, constitute a violation of section 20 of the Act to Regulate Commerce, where such failure is due to a mistake of law?

ARGUMENT.

The act of March 4, 1907, the hours-of-service act (c. 2939, 34 Stat. 1415, 1416), provides that it shall be unlawful for any common carrier, subject to the act, to require or permit any employee actually engaged in or connected with the movement of any train " to be or remain on duty for a longer period than 16 consecutive hours, * * *."

Section 20 of the Act to Regulate Commerce, as amended by the act of June 18, 1910 (36 Stat. 539, 555, 556), reads, in part, as follows:

> * * * and if any carrier, person, or corporation subject to the provisions of this act shall fail to make and file said annual reports within the time specified, or within the time extended by the commission for making and filing the same, or shall fail to make specific answer to any question authorized by the provisions of this section within thirty days from the time it is lawfully required so to do, such party shall forfeit to the United States the sum of one hundred dollars for each and every day it shall continue to be in default with respect thereto. The commission shall also have authority, by gen-

> eral or special orders, to require said carriers, or any of them, to file monthly reports of earnings and expenses, and to file periodical or special, or both periodical and special, reports concerning any matters about which the commission is authorized or required by this or any other law to inquire or to keep itself informed or which it is required to enforce; and such periodical or special reports shall be under oath whenever the commission so requires; and if any such carrier shall fail to make and file any such periodical or special report within the time fixed by the commission, it shall be subject to the forfeitures last above provided.

Under authority of the latter act the commission on June 28, 1911, made an order (Appendix A) requiring "all carriers subject to the provisions of the act entitled 'An act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon,' approved March 4, 1907, to report within 30 days after the end of each month, under oath, all instances where employees subject to said act have been on duty for a longer period than that provided in said act."

It is admitted that the employees mentioned in the complaint were on duty more than 16 hours, and that such excess service was a violation of the hours-of-service act, which should have been included in the report called for by the commission's order. Furthermore, there is no question in this

case as to the power of Congress to authorize the commission to make such an order, that having been settled by this court in the case of *Baltimore & Ohio R. R. Co.* v. *Interstate Commerce Commission,* 221 U .S. 612.

Respondent does not deny that it was fully cognizant of all the circumstances at the time it filed the report. The only defense made is that the failure to comply with the order to report *all* instances of excess service was unintentional and due to the fact that it did not understand that the excess service in question constituted a violation of the hours-of-service act or that it was necessary to include same in its report (R. p. 10). In other words, it was not ignorance of the fact that the employees had remained on duty more than 16 consecutive hours, but an erroneous construction of the law that caused the violation of the commission's order. This defense will not avail. *Ignorantia legis neminem excusat.* (*Armour Packing Co.* v. *United States,* 209 U. S. 56, 85, 86.)

Apparently conceding that ignorance of the law does not excuse it, respondent argues that while it has not literally obeyed the commission's order, it has still not violated the statute, because the report filed complied with the statute.

The sole question presented, therefore, is whether section 20 of the Act to Regulate Commerce is satisfied by the filing, in good faith, of a report false because incomplete.

We have seen that this section provides that "the commission shall also have authority by general or special orders to require said carriers, or any of them, to file * * * periodical or special, or both periodical and special, reports concerning any matters about which the commission is authorized or required by this or any other law to inquire or to keep itself informed or which it is required to enforce; * * * and if any such carrier shall fail to make and file any such periodical or special report within the time fixed by the commission, it shall be subject to the forfeitures last above provided." The forfeitures referred to were "one hundred dollars for each and every day it shall continue to be in default with respect thereto."

The particular matter inquired about was *all* instances of service exceeding 16 consecutive hours. The information sought was within the power delegated to the commission and necessary to the efficient administration of the law.

> To enable the commission properly to perform its duty to enforce the law, it is necessary that it should have full information as to the hours of service exacted of the employees who are subject to the provisions of the statute, and the requirements to which we have referred are appropriate for that purpose and are comprehended within the power of the commission. (*Baltimore & Ohio R. R.* v. *Interstate Commerce Commission,* 221 U. S. 612, 622.)

The commission was not only entitled to a report but a true report, and section 20 reasonably construed requires such a report.

> While, as pointed out on the former writ of error, the act did not expressly require that these reports "should contain a true statement of the condition of the association," yet "by necessary implication, such is the character of the statement required to be made, and by the like implication the making and publishing of a false report is prohibited." 206 U. S. p. 177. (*Jones National Bank* v. *Yates,* 240 U. S. 541, 554.)

Where there has been an instance of excess service it is the duty of the carrier to report it, and if, through mistake of law, it fails to do so, it must, as in other cases, suffer the consequences of reliance upon its own judgment.

This should not be deemed a hardship, because of the easy means of escape from such consequences by reporting doubtful cases to the commission, leaving their determination to the proper tribunal.

It is much better to require the carrier to decide nice questions of law at its peril than to destroy the effective administration of a great remedial law.

> As we have said, if the commission is to be informed of the business of the corporation, so far as its bookkeeping and reports are concerned, it must have full knowledge and full disclosures thereof, in order that it may ascertain whether forbidden practices and discriminations are concealed, even unintentionally, * * *. (*Interstate Commerce*

Commission v. *Goodrich Transit Co.*, 224 U. S. 194, 215–216.)

See also *United States* v. *Yazoo & Mississippi Valley Railroad Co.*, 203 Fed. 159.

The Government does not claim that a separate penalty is incurred for failure to report each instance of excess service, but that the violation of the statute consists of the failure to file a true report, the penalty being the same whether there be one or more instances of excess service. So construed, the penalties claimed are not as large as others which this court has allowed to stand. (*Wadley Southern Railway Co.* v. *Georgia*, 235 U. S. 651; *Waters-Pierce Oil Co.* v. *Texas*, 106 S. W. 918, 930, affirmed in 212 U. S. 86.) The act is remedial and should be liberally construed. Its primary object is to promote the public welfare by securing the safety of employees and travelers. (*Johnson* v. *Southern Pacific*, 196 U. S. 1; *United States* v. *C., B. & Q. R. R. Co.*, 237 U. S. 410, 413; *United States* v. *Erie Railroad Co.*, 237 U. S. 402.)

The alleged harshness of the law "is no concern of the courts." (*St. Louis, Iron Mountain & So. Ry.* v. *Taylor*, 210 U. S. 281, 295.)

CONCLUSION.

The decision of the Circuit Court of Appeals should be reversed and that of the District Court should be affirmed. (*Delk* v. *St. Louis & San Francisco Railroad Co.*, 220 U. S. 580.)

Respectfully submitted.

E. MARVIN UNDERWOOD,
Assistant Attorney General.

OCTOBER, 1916.

APPENDIX A.

INTERSTATE COMMERCE COMMISSION.

ORDER.

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D. C., on the 28th day of June, A. D., 1911.

Present: Judson C. Clements, Charles A. Prouty, Franklin K. Lane, Edgar E. Clark, James S. Harlan, Charles C. McChord, Balthasar H. Meyer, Commissioners.

IN THE MATTER OF THE METHOD AND FORM OF MONTHLY REPORTS OF HOURS OF SERVICE OF EMPLOYEES ON RAILROADS SUBJECT TO THE ACT OF MARCH 4, 1907.

The method and form of monthly reports of hours of service of employees upon railroads subject to the act of March 4, 1907, having been considered by the commission:

It is ordered, That all carriers subject to the provisions of the act entitled "An act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon," approved March 4, 1907, report within 30 days after the end of each month, under oath, all instances where employees subject to said act have been on duty for a longer period than that provided in said act.

It is further ordered, That the accompanying forms entitled "Interstate Commerce Commission Hours of Service Report," and the method embodied in the instructions therein set forth, be, and the same are hereby, adopted and prescribed; and all common carriers subject to said act are hereby notified to use and follow the said prescribed forms and method in making monthly reports of hours of service of employees on duty for a longer period than that named in said act, commencing with and making the first report for the month of July, 1911.

And it is further ordered, That copies of said forms, together with a copy of this order, be forthwith served upon all common carriers subject to said act.

A true copy.

JUDSON C. CLEMENTS,
Chairman.

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